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DEC 17 2008

In re Application of :
Guler, et al. :
Application No. 09/902,928 : DECISION ON PETITION
Filed: July 10, 2001 :
Attorney Docket No. 10014417-1 :
:

This is a decision on the petition, filed December 3, 2008, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before July 2, 2008, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed April 2, 2008.

Petitioner assert that the Notice dated April 2, 2008 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to practitioners at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

1. a statement from the practitioner stating that the Notice was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received; and
3. a copy of the docket record where the nonreceived Notice would have been entered and docketed had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the July 30, 2008 Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

As petitioners have paid the issue fee and publication fee and submitted a completed Part B – Fee(s) Transmittal, it is unnecessary to re-mail the Notice of Allowability and the Notice of Allowance and Fee(s) Due of April 2, 2008. After the mailing of this decision, the application will be referred to the Office of Data Management for processing into a patent.

Telephone inquiries pertaining to this decision may be directed to the undersigned at (571) 272-3230.

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